In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-640

DWIGHT GEDULDIG,

Appellant,

v.

CAROLYN AIELLO, individually and on behalf of all others similarly situated,

Appellees.

DWIGHT GEDULDIG,

Appellant,

v.

AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, individually and on behalf of all other women similarly situated,

Appellees.

CONSOLIDATED CASES ON APPEAL
FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DOCKETED OCTOBER 12, 1973
JURISDICTION NOTED DECEMBER 17, 1973

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DOCKET ENTRIES

Date 1972	Proceedings (No. C-72-1402 SW)
July 31	Filed Complaint for Injunctive and Declaratory Relief, issued summons
Oct. 25	Filed Order Designating United States Circuit Judge and United States District Judges Pursuant to 2284, Title 28, USC
Dec. 5	Filed Order Consolidating C-72-1402 SW and C-72-1547 SW
27	Filed Consolidated Complaint for Injunctive and Declaratory Relief
1973	
Jan. 10	Filed Notice of Motion and Motion for Summary Judgment
12	Filed Petition in Intervention for Writ of Mandamus and for Injunctive and Declaratory Relief; Memorandum of Points and Authorities
18	Filed Answer to Consolidated Complaint
31	Filed Notice of Motion; Motion to Dismiss Complaint; Memorandum of Points and Authorities
31	Filed Plaintiffs' Supplemental Memorandum
Feb. 20	Filed Plaintiffs' Reply to Defendant's Memorandum of Law
Feb. 21	Filed Affidavit of William D. Smith
May 31	Filed Opinion signed by Judge Ben C. Duniway and Judge Alfonso J. Zirpoli and Dissent by Judge Spencer Williams
June 15	Filed Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment signed by Judge B. C. Duniway and Judge Alfonso J. Zirpoli
21	Filed Motion to Reconsider and Set Aside Summary Judgment

Date 1973	
July 9	Filed Memorandum of Points and Authorities in Opposition to Motion to Reconsider and Set Aside Summary Judgment
23	Filed Motion to Stay Injunction Pending Hearing on Motion for Reconsideration
27	Filed Motion for Stay of Execution Pending Hearing on Motion for Reconsideration
27	Filed Reply to Opposition to Motion to Reconsider
Aug. 7	Filed Memorandum by Judge Spencer Williams
7	Filed Order Denying Motion to Reconsider Judgment, signed by Judge Ben C. Duniway and Judge Alfonso J. Zirpoli
Aug. 13	Filed Notice of Appeal to the United States Supreme Court
16	Filed Notice of Motion; Motion for Stay; Memorandum of Points and Authorities
16	Filed Notice of Substitution of Party Defendant
24	Filed Memorandum of Points and Authorities in Opposition to Motion for Stay
Sept. 10	Filed Order Denying Motion for Stay Pending Appeal

In the United States District Court
for the Northern District of California

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Plaintiff,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, et al., individually and on behalf of all other women similarly situated, *Petitioners,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

CONSOLIDATED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF (Civil Rights)

I

PRELIMINARY STATEMENT

Plaintiffs, California working women who were unable to work because of pregnancy-related disabilities, seek, individually and on behalf of all other persons similarly situated, to have this court declare invalid and enjoin the enforcement of section 2626 of the California Unemployment Insurance Code which denies state disability insurance benefits to workers disabled by injury or illness caused

by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of 28 days thereafter.[1]

Every nonwork-related disability, with the *sole* exception of pregnancy-related disability, is compensable under the state disability insurance laws. Thus compensable disabilities include illness or injury arising from sex change operations, attempted suicide, circumcision, prostatectomies, alcoholism, and cigarette-caused lung cancer. Noncompensable injury or illness includes heart-conditions, anemia, epilepsy, or bloodclotting when they are related to pregnancy, as well as the more common disabilities associated with pregnancy such as miscarriage, tubal pregnancy, labor and delivery.

Plaintiffs therefore challenge Section 2626 on the grounds that it denies women equal protection of the laws under Article I, sections 11 and 21 of the California Constitution and the Fourteenth Amendment to the Constitution of the United States. In addition, plaintiffs challenge the statute on the grounds that it discriminates against them on the basis of their sex contrary to Article XX, section 18 of the California Constitution and Title VII of the Civil Rights Act of 1964.

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1. At the request of the Attorney General and for the convenience of the court, plaintiffs submit this complaint consolidating the Complaint in *Aiello v. Hansen*, C-72-1402-SW, and the Petition for Writ of Mandate in *Armendariz, et al v. Hansen*, C-72-1547 SW. Except to the extent necessary to adapt the Petition for Writ of Mandate, written according to the rules and in the form appropriate to state court, to federal law and procedure (e.g., instead of mandamus, injunctive relief is sought under 28 U.S.C. § 1983; petitioners there are referred to as plaintiffs here) no significant additions, alterations, or deletions have been made in the substance of the complaint. Exhibits to the Petition for Writ of Mandate in *Armendariz* and the Complaint in *Aiello* are referred to and incorporated by reference in this consolidated complaint.

II

JURISDICTION

1. Jurisdiction is conferred on this court by 28 U.S.C. § 1343(3), (4) which provides for original jurisdiction of this court in all suits authorized by 42 U.S.C. § 1983 to redress the deprivation under color of state law of any right, privilege, or immunity secured by the Constitution of the United States or by an Act of Congress providing for equal rights or civil rights of all persons within the jurisdiction of the United States, and 28 U.S.C. § 1331, which provides for original jurisdiction of this court in civil actions arising under the Constitution, laws, or treaties of the United States. In addition, jurisdiction is conferred by section 706 (f) (3) of Title VII of the Civil Rights Act of 1964, 28 U.S.C. § 2000e-4(f), which confers on this court jurisdiction over actions arising under Title VII. Finally, this court has pendant jurisdiction over the state constitutional claims raised in this suit since the state and federal claims derive from a common nucleus of operative fact. (*United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).)

2. Plaintiffs' action for declaratory and injunctive relief is authorized by:

(a) 28 U.S.C. §§ 2201, 2202, and Rule 57 of the Federal Rules of Civil Procedure, which relate to declaratory judgments:

(b) 42 U.S.C. § 1983 which provides redress for the deprivation under color of law of rights, privileges and immunities secured to all citizens and persons within the jurisdiction of the United States by the Constitution and laws of the United States:

(c) Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 which prohibits discrimination on the basis of sex in employment.

III

THREE-JUDGE COURT

This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 since plaintiffs seek an injunction to restrain defendant, who is a state officer, from the enforcement, operation and execution of a state statute (Cal. Unemp. Ins. Code, § 2626) of statewide applicability on the ground that said statute is contrary to the Constitution of the United States.

IV

PLAINTIFFS

1. Plaintiff CAROLYN AIELLO is a resident of the City and County of San Francisco, State of California.

2. Petitioner AUGUSTINA D. ARMENDARIZ is a resident of Gilroy, Santa Clara County, California.

3. Plaintiff ELIZABETH B. JOHNSON resides in Novato, Marin County, California.

4. Plaintiff JACQUELINE JARAMILLO resides in Oakland, Alameda County, California.

5. Plaintiff SAN FRANCISCO WAITRESSES UNION has its main office at 440 Ellis Street, San Francisco, California.

V

CLASS ACTION

The named plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a), (b)(2) of the Federal Rules of Civil Procedure, on behalf of all other persons similarly situated. The class is composed of all women residing in California who, but for the fact that their disability is due to illness or injury caused by or arising in

connection with pregnancy, are or would be eligible to receive disability insurance benefits from the state of California. The persons in the class are so numerous that joinder of all members is impracticable; there are questions of law or fact common to the class; the claims of the representative parties are typical of the claims of the class; the representative parties will fairly and adequately protect the interests of the class; and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

VI

DEFENDANT

Defendant SIGURD HANSEN is the Director of the Human Resources Development agency of the State of California and in his official capacity defendant is charged with the state-wide administration of the California Unemployment Compensation Disability Act. Defendant at all times mentioned herein was acting under color of state law.

VII

FACTS

1. More than two million California women are presently insured under the State Disability Insurance plan. These women, together with more than three million male workers, completely finance the disability insurance program through their mandatory contribution of approximately one percent of their earnings each pay period to the disability insurance fund. (See Actuarial Report of the Unemployment Compensation Disability Fund (1970) attached to and incorporated in the Memorandum of Points

and Authorities in Support of the Petition for Writ of Mandate as Exhibit A, and incorporated by reference herein.)

3. As a direct and proximate result of the operation of section 2626, the Department of Human Resources Development estimates that over 200,000 women per year are denied disability benefits for which they would otherwise be eligible were Section 2626 not to exclude pregnancy-related disabilities. (See publication of the Department of Human Resources Development dated June 12, 1972, attached and incorporated in the Petition for Writ of Mandate as Exhibit 10, and incorporated by reference herein.)

4. All the individual plaintiffs herein contributed one percent of their income to the State Disability Insurance fund through involuntary payroll deductions. Plaintiffs Aiello, Armendariz, and Johnson were all denied disability benefits on the ground that their disabilities were related to pregancy. At the time the Petition for Writ of Mandate was filed, plaintiff Jaramillo, who was in the eighth month of a normal pregnancy, had inquired as to her eligibility for state disability benefits during the time she was disabled by the birth of her child and was told that she would not be entitled to such benefits because of section 2626.

5. Until June 21, 1972, plaintiff CAROLYN AIELLO was employed as a hairdresser at Salvatore's Hair Cutting Company in the City and County of San Francisco, State of California.

6. On June 21, 1972, Ms. Aiello took a leave of absence from her employment because of medical problems arising in connection with a pregnancy. On or about June 22, 1972, she was hospitalized and underwent surgery at San Francisco General Hospital to correct a condition diagnosed as an ectopic pregnancy. Ms. Aiello remained in the hospital

until June 29, 1972. As of July 20, 1972 plaintiff has been physically unable to return to her former employment because of her weakened condition, pursuant to the advice of her physician.

7. On or about June 23, 1972, Ms. Aiello applied for disability benefits on the grounds that her physical condition rendered it impossible for her to continue her employment. On July 12, 1972, she received a Notice of Determination from the Department of Human Resources Development that her claim for disability was denied for the reason that her disability was due to illness or injury arising in connection with pregnancy. (A copy of said notice is attached to and incorporated in the original complaint as Exhibit A, and is incorporated by reference herein.)

8. Plaintiff AUGUSTINA D. ARMENDARIZ is a 29 year old woman who is married and the mother of an eight-month-old son. She is now the sole support of herself, her hubsand, and her son. She works full-time as a secretary, taking home earnings of approximately $197 twice each month. Ms. Armendariz has been self-supporting and employed full-time since 1961. (See Declaration of Augustina D. Armendariz, attached to and incorporated in the Petition for Writ of Mandate as Exhibit 1, and incorporated by reference herein.)

9. During the fourth month of pregnancy, Plaintiff Augustina Armendariz suffered a miscarriage and was unable to work again for 22 days. On May 9, 1972, she was forced to leave work because she felt ill. She began bleeding and was told by her doctor to rest at home. Early in the morning of May 9, she went into labor and, in the ambulance on the way to the hospital, suffered a miscarriage. At the hospital, her physician performed a dilation and curetage. Ms. Armendariz remained in the hospital

until the morning of May 11, 1972. She was told that she could not go back to work until May 28, 1972. (See Doctor's certificate of Taki N. Anagnoston, M.D., attached to and incorporated in Petition for Writ of Mandate as Exhibit 2 and incorporated by reference herein.) Ms. Armendariz returned to work on May 30, 1972, the first working day after May 28, 1972.

10. Plaintiff Armendariz applied for State Disability Insurance benefits on May 15, 1972. Her claim was denied on May 24, 1972. The sole basis for denial of benefits was that her disability arose in connection with pregnancy. Plaintiff Armendariz requested a hearing before the Unemployment Insurance Appeals Board referee on May 30, 1972. The hearing was held on July 6, 1972. On July 17, 1972, referee Anthony Schmidt rendered his decision denying Plaintiff's claim on the basis of Section 2626 of the Unemployment Insurance Code.

11. At her hearing before the referee, Plaintiff Armendariz had challenged Section 2626 on the same grounds presented herein. The referee's decision (attached to and incorporated in the Petition for Writ of Mandate as Exhibit 3 and incorporated by reference herein) relies on Precedent Tax Decision P-T-31 of the Unemployment Insurance Appeals Board to the effect that it is not within the proper scope of administrative adjudication to determine whether legislation is constitutional. After counsel sought clarification of the continued viability of P-T-31, the referee acknowledged that said decision is still in effect. (See letter of Anthony Schmidt, attached to and incorporated in the Petition for Writ of Mandate as Exhibit 4 and incorporated by reference herein.) (Precedent Tax Decision P-T-31 is also attached to and incorporated in the Petition for Writ of Mandate as Exhibit 5 and incorporated by reference herein.)

12. Plaintiff ELIZABETH B. JOHNSON is the head of a household composed of herself and her son, Demetrius, age five years. She is the sole source of support for herself and her son. Ms. Johnson has been employed as an operator for the telephone company for over two years. Her take-home pay averages $75 every two weeks. She also receives a small supplement from the county welfare department to assist her in meeting certain costs.

13. Plaintiff Johnson was admitted to the Kaiser Foundation Hospital in Marin County on May 22, 1972, after experiencing intense abdominal pain, swelling in the legs, back pain, body aches, fever, nausea, dizziness, and general illness for several days. Her condition was diagnosed as a tubal pregnancy and an operation deemed necessary to save her life. The operation was performed on May 23, 1972. Ms. Johnson was discharged from the hospital on May 30, 1972, and was advised that the first day she would be able to return to work would be July 10, 1972, approximately six weeks after the operation. (See Declaration of Elizabeth B. Johnson, attached to and incorporated in the Petition for Writ of Mandate as Exhibit 6 and incorporated by reference herein.)

14. Plaintiff Johnson's application for State Disability insurance benefits, due to her illness and disability resulting from the tubal pregnancy, was denied on June 12, 1972. (See Notice of Determination, attached and incorporated in the Petition for Writ of Mandate as Exhibit 7 and incorporated by reference herein.) The stated reason for denying Ms. Johnson benefits for the first 28 days of her disability was that she was disqualified from such benefits by Section 2626 of the California Unemployment Insurance Code.

15. Plaintiff JACQUELINE JARAMILLO is a 21-year-old woman who is pregnant and is expecting a baby on September 4, 1972. Except for her husband's educational expenses, which are paid for under the G.I. Bill, she is the sole support for herself, her husband, and their expected child. Although she is more than eight months pregnant, Ms. Jaramillo continues to work because her family has no other source of support. Because of the denial of benefits pursuant to § 2626, she intends to return to work as soon as her doctor will permit. (See Declaration of Jacqueline Jaramillo attached to and incorporated in Petition for Writ of Mandate as Exhibit 8 and incorporated by reference herein.)

16. Plaintiff SAN FRANCISCO WAITRESSES UNION consists of 4000 members, all of them women. A substantial number of the members of petitioner Union have been or will be adversely affected by Unemployment Insurance Code Section 2626. (See Declaration of San Francisco Waitresses Union, attached to and incorporated in the Petition for Writ of Mandate as Exhibit 9 and incorporated by reference herein.)

VIII

FIRST CAUSE OF ACTION

For a first cause of action plaintiffs allege:

1. Section 2626 of the California Unemployment Insurance Code provides:

> "Disability" or "disabled" includes both mental and physical illness and mental or physical injury. An individual shall be deemed disabled in any day in which, because of his physical or mental condition, he is unable to perform his regular or customary work. In no case shall the term "disability" or "disabled" include

any injury or illness caused by or arising in connection with pregnancy up to the termination of such pregnancy and for a period of 28 days thereafter.

2. This provision creates two classes of persons for purposes of State Disability Insurance: one class composed of persons unable to work because of mental or physical illness or injury not related to pregnancy, and the other class composed of persons unable to work because of illness or injury caused by or arising in connection with pregnancy.

3. Persons who in all other ways qualify for State Disability Insurance benefits are denied those benefits in California solely because their disability is caused by or arises in connection with pregnancy.

4. These disabled persons who are denied benefits are indistinguishable from those who do receive benefits, except for the cause of their disability.

5. California Unemployment Insurance Code Section 2626, in severely limiting the compensability of pregnancy-related disabilities, discriminates against women solely on account of their sex. No adequate state justification exists for the arbitrary classification scheme embodied in Section 2626, and hence it is invalid under the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

IX

SECOND CAUSE OF ACTION

For the second cause of action, plaintiffs allege:

1. For the reasons set forth in Paragraphs 1 through 4 of the First Cause of Action, section 2626 of the California Unemployment Insurance Code discriminates against

women on the basis of their sex and no adequate state justification exists for the arbitrary classification scheme embodied in that section. Therefore, section 2626 is invalid under the equal protection clauses of Article I, section 11 and 21, of the Constitution of the State of California.

X

THIRD CAUSE OF ACTION

For a third cause of action, plaintiffs allege:

1. By denying women employees disabled by pregnancy-related illness or injury the disability benefits which relieve the financial hardship of all other disabled employees covered by the California Unemployment Compensation Disability Act, Section 2626 places said women employees at a serious disadvantage in the pursuit of their chosen occupations and discriminates against them in the terms and conditions of their employment solely on the basis of their sex.

2. The statute, without adequate justification, therefore abridges Article XX, section 18 of the California Constitution which provides that a person may not be disqualified because of sex from entering or pursuing a lawful business, vocation, or profession.

XI

FOURTH CAUSE OF ACTION

For a fourth cause of action, plaintiffs allege:

1. For the reasons set forth in paragraphs 1 through 4 of the First Cause of Action, Section 2626 of the California Unemployment Insurance Code discriminates against women on the basis of their sex in the terms and conditions of employment.

2. Section 703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2(a) makes it an unlawful employment practice to discriminate against individuals with respect to the compensation, terms, conditions, or privileges of employment or to limit, segregate or classify employees in any way which would adversely affect their status as employees on the basis of those individuals' sex.

3. The Sex Discrimination Guidelines issued by the Equal Employment Opportunity Commission pursuant to Title VII of the Civil Rights Act of 1964 (29 C.F.R. § 1604 *et seq.*) state that disabilities caused by or contributed to by pregnancy or childbirth are, for all job-related purposes, temporary disabilities and should be treated as such under temporary disability insurance plans available in connection with employment.

4. Section 2626 is contrary to the intent and purpose of Title VII of the Civil Rights Act of 1964 and the guidelines issued pursuant thereto, and therefore is invalid under the Supremacy Clause of the United States Constitution.

XII

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully pray, on behalf of themselves and those similarly situated, that this Court:

1. Assume jurisdiction of this cause, convene a three-judge district court pursuant to 28 U.S.C. §§ 2281 and 2284 to determine this controversy, and set this case down promptly for a hearing.

2. Determine by order, pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure, that this action be maintained as a class action.

3. Enter a final judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that California Unemployment Insurance Code § 2626 is invalid on the grounds that it is violative of Article 1, sections 11 and 21 and Article XX, section 18 of the California Constitution, and the equal protection clause of the Fourteenth Amendment and the Supremacy Clause (Article VI, cl. 2) to the Constitution of the United States.

4. Enter preliminary and permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure:

(a) Enjoining defendant, his successors in office, agents and employees, and all other persons in active concert and participation with him from refusing to grant to plaintiffs and all persons similarly situated State Disability Insurance benefits on the ground that their disabilities are caused by or arise in connection with pregnancy.

(b) Ordering the defendant to implement appropriate interim regulations for providing women with pregnancy-related disabilities state disability benefits on the same basis as other disabled employees pursuant to the California Unemployment Insurance Code.

(c) Directing defendant to award to plaintiffs Aiello, Armendariz, Johnson and Jaramillo the state disability insurance benefits, due to and denied them for their pregnancy-related disabilities, on the same basis as benefits are awarded for disabilities unrelated to pregnancy.

5. Award plaintiffs reasonable attorneys' fees.

6. Award plaintiffs their costs of suit and grant them and all others similarly situated such additional or alter-

native relief as may seem to this court to be just, proper and equitable.

Dated: December 26, 1972.

Respectfully submitted,

ROLAND C. DAVIS
JOEL GOMBERG
CECILIA D. LANNON
JOSEPH C. MOREHEAD
PETER H. WEINER
WENDY WEBSTER WILLIAMS

Attorneys for Plaintiffs

By: s/ WENDY WEBSTER WILLIAMS
Wendy Webster Williams

Exhibit 1

[to Plaintiffs' State Court Petition for Writ of Mandate]

DECLARATION OF AUGUSTINA D. ARMENDARIZ

I, AUGUSTINA D. ARMENDARIZ, declare:

That I am one of the named petitioners in the suit on file herein.

I am 29 years old, am married, and have an eight-month-old son. I am now the sole source of support for myself and my family.

I am now employed as a secretary. I have been employed full-time, supporting myself and now my family for eleven years. My take-home pay is $197 every two weeks. My husband worked the first four months of this year, grossing $2200, but is now unemployed and will remain unemployed for the rest of the year. He has been recuperating from an operation and will soon enter school.

On May 8, 1972, I was forced to leave work in the afternoon because I felt ill. I went to my doctor, Dr. Taki N. Anagnoston, who told me that I was bleeding and that I should rest at home. The bleeding and cramps became worse during the night. At about 2:00 a.m. I had to call an ambulance. I went into labor and, in the ambulance on the way to the hospital, suffered a miscarriage. At the hospital, I underwent a dilation and curetage. I remained in the hospital until the morning of May 11, 1972. My doctor told me that I could not go back to work until May 28, 1972. The next working day subsequent to May 28, 1972, was May 30, 1972. On that day I did return to work.

I applied for State Disability Insurance benefits on May 15, 1972. My claim was denied on May 24, 1972. I was told that the only basis for denying me benefits was that my

disability arose in connection with pregnancy. I requested a hearing before the Unemployment Insurance Appeals Board referee on May 30, 1972. The hearing was held on July 6, 1972. At that hearing I challenged the constitutionality of Section 2626 of the California Unemployment Insurance Code because it discriminates against women. On July 17, 1972, the referee rendered his decision denying my claim and stated that he could not decide the constitutionality of Section 2626 of the Unemployment Insurance Code.

I suffered an immense amount of pain resulting from my miscarriage. For at least two weeks thereafter, I was unable even to wash the household dishes. I was able to arise from my bed only sporadically and had to rest most of the time. I was very weak, and I know that I could not have worked. I do not understand why the Legislature decided that my disability, which was certainly as real as any other, should be denied compensation just as if it were a normal condition. As a result of my being unable to get disability benefits, my family and I have suffered severe financial hardship.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 15, 1972, at Gilroy, California.

AUGUSTINA D. ARMENDARIZ

AUGUSTINA D. ARMENDARIZ

Exhibit 6

[to Plaintiffs' State Court Petition for Writ of Mandate]

DECLARATION OF ELIZABETH B. JOHNSON IN SUPPORT OF COMPLAINT HEREIN

I, ELIZABETH B. JOHNSON, declare:

That I am one of the named plaintiffs in the suit on file herein.

That I am the head of a household composed of myself and my minor son, Demetrius, age five years. I am the sole source of support for myself and my son.

As head of the household I have been employed as an operator for the Telephone Company for over two years. After deductions, dues, credit union charges and miscellaneous business expenses, my take home pay from my position with the Telephone Company averages $75.00 every two weeks. In addition to this pay, I receive a small supplement from the County Welfare Department to assist me in meeting costs for transportation, child care, and other business expenses, so that I may remain gainfully employed, and, hopefully, may be able to become entirely self-supporting in the near future.

That on May 22, 1972, after experiencing intense abdominal pain, swelling in the legs, back pain, bodyaches, fever, nausea, dizziness and general illness for several days, I was admitted to the Kaiser Foundation Hospital in Marin County. After several tests at the hospital and examinations by many specialists, my condition was diagnosed as tubal pregnancy. I was informed that an operation was mandatory, and had to be performed immediately, since the affected area had ruptured and was causing internal hemorrhaging, which could be fatal.

The operation was performed on May 23, 1972. I was released from the hospital on May 30, 1972, and advised that the first day I would be able to return to work would be July 10, 1972, approximately six weeks after the operation.

That I applied for benefits due to my illness and disability for the period beginning with my hospitalization on May 22, 1972. On June 12, 1972, I was advised by the claims examinor that my claim for disability insurance was disallowed, since my disability was "due to illness or injury caused by or arising in connection with pregnancy". The notice of determination cited the California Unemployment Insurance Code Section 2626, and advised me that I could file a claim if I still was disabled 29 days after the termination of the pregnancy. In order to obtain the benefits it would be necessary for me to re-file at that time. I was also advised informally, that I would only be paid for twelve days of disability, even though I was unable to work for approximately six weeks pursuant to doctors' orders. In fact, when I waited the requisite 29 days to file my claim, I was paid for 12 days, a total of $101.00 for six weeks' disability. I was advised by the Human Resources Development Department that even though I was eligible for additional days of disability, the Department intended to keep 7 days of disability funds due me as a penalty, since I was not in the hospital at the time I re-filed my claim.

That during the time when I was off work, my total sick leave pay from my position with the Telephone Company amounted to $128.10, which sum represents approximately ½ of my regular pay, which is the standard rate of sick leave pay for Telephone Company employees.

That I was advised by my doctor that the tubal pregnancy which I suffered was an abnormal condition, which

always resulted in termination of pregnancy. There is no hope that the pregnancy can continue normally in such a situation. I was advised by my doctor that if the condition were not corrected via surgery, it could prove fatal, could affect future child-bearing and/or cause sterility, and would certainly necessitate lengthy hospital stays. I did not choose to have a tubal pregnancy, an abnormal and painful condition, to jeopardize my health, or run the risk of dying as a result of this condition, which could never result in a successful pregnancy. I do not understand why this debilitating illness was treated and penalized by the Human Resources Development Department just as if it were a normal, consciously chosen, healthy and successful pregnancy.

That my son and I are suffering because of the disallowance of my disability claim in that our income has been reduced drastically, so that I cannot pay for the basic necessities of life for us.

I declare under penalty of perjury the foregoing to be true and correct.

Executed on 12 Aug 72, at San Rafael, California.

ELIZABETH B. JOHNSON

ELIZABETH B. JOHNSON

Exhibit 8

[to Plaintiffs' State Court Petition for Writ of Mandate]

DECLARATION OF JACQUELINE JARAMILLO

STATE OF CALIFORNIA }
COUNTY OF ALAMEDA } ss.

I, JACQUELINE JARAMILLO, being duly sworn, deposes and says:

I am Twenty-one (21) years old and currently reside with my husband, LOUIS JARAMILLO, age Twenty-eight (28), at 828 Adeline Street, Apartment "E", Oakland, California.

Since November of 1971, I have been employed as a Compliance Officer with the Model Cities Unit, a division of the Alameda County Legal Aid Society. At present, my gross earnings are Seven Hundred Dollars ($700) per month, take-home pay amounting to about Five Hundred and Fifteen Dollars ($515) per month.

During the past academic year, 1971-1972, my husband has not been employed due to the fact that he has been enrolled as a law student at the University of San Francisco School of Law. I have, for the past academic year, and continue to be at present the principal wage-earner in our family.

At this time I am eight months pregnant and am due to deliver my child approximately the first week of September, 1972. I intend to work as long as I am physically able to do so and intend to return as soon as my doctor permits me to do so.

Insofar as my husband is a student, who does not receive financial assistance from school, our sole source of income will be my husband's G. I. Benefits, which amounted to Two Hundred and Five Dollars ($205) per month during

the time that he is enrolled in school. This amount will be increased by about Twenty Five Dollars ($25) upon the birth of our child. The G.I. benefits go entirely to pay for my husband's education. Tuition at U.S.F. is approximately Two Thousand Dollars ($2000) per year, we must pay One Thousand Dollars ($1000) of this in September. Also the law books my husband must buy are very expensive.

I have been informed by my employer that I am not eligible for either unemployment insurance benefits or disability insurance benefits during that time when I am on maternity leave. Nor will my employer continue to maintain me on the payroll during such time. Finally, I contacted the Welfare Department and they informed me that I would be ineligible for Welfare relief because my husband is a student and receives G.I. benefits while in school. Because the G.I. bill benefits go to pay for my husband's education, my income is the sole source of food, rent and other necessities of life. Without disability benefits during the time I cannot work, my husband, new baby and I face severe deprivation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Oakland, California on Aug. 10th, 1972.

JACQUELINE JARAMILLO

JACQUELINE JARAMILLO

Exhibit E

[to Plaintiffs' State Court Petition for Writ of Mandate]

DECLARATION OF DR. ALAN GOLDFIEN IN SUPPORT OF PETITIONER'S COMPLAINT

STATE OF CALIFORNIA
COUNTY OF SAN MATEO } ss.

I, Dr. Alan Goldfien, am a Professor of Medicine in the Department of Obstetrics and Gynecology at the University of California Medical Center, Parnassus and Third Streets, San Francisco, California.

From my experience as a teacher as well as practicing physician, I know that there are certain periods during every pregnancy when a woman is not physically able to work. Every pregnancy results in an inability to work during labor and for several days thereafter. Some complications of pregnancy or birth such as a caesarian section or infection can result in a longer period of hospitalization and inability to work.

Dated: August 14, 1972.

ALAN GOLDFIEN
Dr. Alan Goldfien

Official Seal
MILDRED W. FITZHARRIS
Notary Public-California
San Francisco County

My Commission Expires June 19, 1976
Subscribed and sworn to
before me this August 14, 1972.
MILDRED W. FITZHARRIS
Notary Public

In the United States District Court
for the Northern District of California

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Plaintiff,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, et al., individually and on behalf of all other women similarly situated, *Petitioners,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

ANSWER TO
CONSOLIDATED COMPLAINT

Defendant Sigurd Hansen, Director of the Department of Human Resources Development hereby answers the consolidated complaint on file herein and admits, denies and alleges as follows:

Answering plaintiffs' FIRST CAUSE OF ACTION, defendant:

1. Admits the allegations of paragraph 1.

2. Admits the allegations of pragraph 2, except that defendant denies that persons whose illness or injury arises

in *connection with* pregnancy are in the same class as those whose illness or injury is *caused* by pregnancy. Defendant further alleges that compensation is denied only in cases where illness or injury is *caused by* pregnancy, as a result of "Precedent Decisions" which require the payment of compensation in cases where the causative agent is something other than pregnancy, even though pregnancy may be incidental.

3. Admits the allegations of paragraph 3, except that defendant denies that benefits are denied to a woman whose disability arises in connection with but is not caused by pregnancy.

4. Admits the allegations of paragraph 4.

5. Denies the allegations of paragraph 5.

Answering plaintiffs' SECOND CAUSE OF ACTION, defendant denies each and every allegation thereof.

Answering plaintiffs' THIRD CAUSE OF ACTION, defendant denies each and every allegation thereof.

Answering plaintiffs' FOURTH CAUSE OF ACTION, defendant:

1. Denies the allegations of paragraph 1.

2. Admits the allegations of paragraphs 2 and 3.

3. Denies the allegations of paragraph 4 and further alleges that neither Section 703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2 (a) nor the Sex Discrimination Guidelines issued by the E.E.O.C. thereunder is applicable to defendant, since defendant is excluded from the definition of employer under 42 U.S.C. § 2000e(b)(1).

AS AND FOR A FURTHER, SEPARATE AFFIRMATIVE DEFENSE TO THE COMPLAINT, defendant alleges that plaintiffs' consolidated complaint fails to state a claim upon which relief can be granted.

WHEREFORE, defendant prays that plaintiffs take nothing by their complaint on file herein, that defendant have judgment for his costs of suit herein incurred and for such other and further relief as to the court may seem proper.

DATED: January 18, 1973.

EVELLE J. YOUNGER, Attorney General
of the State of California

ELIZABETH PALMER
Assistant Attorney General

JOANNE CONDAS
Joanne Condas
Deputy Attorney General

Attorneys for Defendant

In the United States District Court
for the Northern District of California

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Plaintiff,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, et al., individually and on behalf of all other women similarly situated, *Petitioners,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT

To the above-named defendants:

PLEASE TAKE NOTICE that the plaintiffs will bring on for hearing in Room 10 of the United States Courthouse, 450 Golden Gate Avenue, San Francisco, California, on the 22nd day of February, 1973, at 2 p.m. o'clock, or as soon thereafter as counsel can be heard, the following motion for summary judgment.

Plaintiffs move the Court as follows:

That it enter, pursuant to Rule 56 of the Federal Rules

of Civil Procedure, a summary judgment in plaintiffs' favor for the relief demanded in the complaint on the ground that there is no genuine issue as to any material fact and that plaintiffs are entitled to a judgment as a matter of law.

This motion is based upon the Petition for Writ of Mandate in *Armendariz v. Hansen*, Civil No. C-72-1547-SW, the Complaint in *Aiello v. Hansen*, Civil No. C-72-1402-SW, and the Consolidated Complaint in *Aiello, et al v. Hansen*, Civil No. C-72-1402-SW.

Dated Januray 10, 1973

ROLAND C. DAVIS
JOEL GOMBERG
CECILIA D. LANNON
JOSEPH MOREHEAD
PETER H. WEINER
WENDY W. WILLIAMS

By WENDY W. WILLIAMS
Wendy W. Williams
Attorneys for Plaintiffs

In the United States District Court
for the Northern District of California

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Plaintiff,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, et al., individually and on behalf of all other women similarly situated, *Petitioners,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

NOTICE OF MOTION: MOTION TO DISMISS COMPLAINT: MEMORANDUM OF POINTS AND AUTHORITIES.

TO: All counsel of record for all parties to this action:

Please take notice that on February 22, 1973 at 2:00 p.m., or as soon thereafter as counsel may be heard, in Courtroom 10, Federal Building, 450 Golden Gate Avenue, San Francisco, California, Defendant Sigurd Hansen, Director of the Department of Human Resources Development of the State of California, will move the Court to dismiss the consolidated complaint filed herein, for the reasons that the court lacks jurisdiction, in that the complaint raises no sub-

stantial federal question, and that the complaint fails to state a claim upon which relief can be granted.

Said motion to dismiss and opposition to motion for summary judgment will be based on all the pleadings, records and papers on file herein and the memorandum of law attached and filed and served with this Notice of Motion and such other grounds as may be offered at the hearing.

DATED: January 31, 1973.

EVELLE J. YOUNGER,
Attorney General of the
State of California

ELIZABETH PALMER
Assistant Attorney General

JOANNE CONDAS
Joanne Condas
Deputy Attorney General

Attorneys for Defendant

AFFIDAVIT

[In support of motion to dismiss complaint]

DR. D. ALLEN TREAT, being first duly sworn, deposes and says:

I am Medical Director for the Department of Human Resources Development and have held that post since 1970. Prior to taking that position, from 1964 to 1970, I was Statewide Medical Consultant to the Aid to Totally Disabled program of the Department of Social Welfare. From 1962 to 1964 I was Assistant Medical Director of the Department of Employment. From 1959 to 1962 I was Medical Director of Sacramento County Hospital, and from 1953 to 1959 I was Assistant Medical Superintendent of San Francisco General Hospital.

As a physician and as Medical Director of Human Resources, Development, I have had occasion to obtain information concerning pregnancy and the complications of pregnancy. It is my observation that obstetricians normally schedule the first postpartum examination six weeks after the date of delivery. This interval after birth allows for complications to develop if there are any or for the mother's condition to return to normal. If a medical certification that a mother is physically fit to return to work is required, it will normally be executed by the physician at this time.

It is also my observation that obstetricians tend to prescribe cessation of employment for their patients during the third trimester of pregnancy for various reasons. These reasons include reducing and controlling the amount of physical exertion, better control over diet, greater ease in arranging medical appointments, and availability for immediate hospitalization in case of labor onset. These factors

are present in every pregnancy and they are vitally important in cases involving complications of pregnancy.

As a result of my experience and observations, it is my conclusion that the average pregnancy will result in a woman being disabled in a medical sense for a period of 15 to 18 weeks.

D. ALLEN TREAT
Dr. D. Allen Treat

Subscribed and sworn to before me this 22nd day of January, 1973.

BILLIE R. HUNTLEY
Notary Public

Notary Seal

AFFIDAVIT

[In Support of Motion to Dismiss Complaint]

DR. WALTER M. BALLARD, M.D., being first duly sworn, deposes and says:

I am Chief of Maternal Health and Family Planning, Bureau of Maternal and Family Health, State Department of Public Health. I have been employed by the State Department of Public Health for approximately four and one-half years. Prior thereto, I was engaged in the private practice of medicine as an obstetrician and gynecologist. In addition to my M.D. degree, I hold board certification by the American Board of Obstetrics and Gynecology. I also hold a master's degree in public health from the University of California at Berkeley.

In my experience and observation it is conservative medical practice to prescribe that pregnant women cease working during the third trimester of pregnancy as an element of good prenatal care. Increased rest is beneficial in reducing the incidence of toxemia and also in reducing the incidence of prematurity of birth.

Reducing the amount of physical activity tends to lessen the likelihood of developing toxemia. In women who do develop toxemia, rest is a definite part of their therapy.

Reducing the amount of physical activity also tends to lessen the chance of early onset of labor and premature birth. Premature birth is undesirable, inasmuch as the incidence of mental retardation among premature babies is approximately 10%, as opposed to the normal incidence of 3% in the general population.

WALTER M. BALLARD, M.D.

Dr. Walter M. Ballard, M.D.

Subscribed and sworn to before
me this 24th day of January, 1973.

DARTOP KAPOOR
Notary Public

(Notary Seal)

AFFIDAVIT

[In Support of Motion to Dismiss Complaint]

CHARLES E. SEVICK, being first duly sworn, deposes and says:

I am Senior Research Analyst, Department of Human Resources Development, and have held this position since 1962. In all, I have been employed in statistical research with the Department for approximately 24 years. In such position, my duties include preparation of cost estimates for various legislative proposals affecting the Unemployment Insurance and Disability Insurance Funds and preparation of data concerning the solvency of these funds.

The past claims experience of the Disability Insurance Fund has been that the amount of benefits paid out almost equals the amount of contributions received. Set out below are the figures for the years 1966 through 1970:

Cost Rates; Amount of Benefits Paid Divided by Contributions Earned	
1966	.90
1967	.91
1968	.91
1969	.94
1970	1.03

Figures for later periods are not yet available.

Based upon the assumptions described below, it is anticipated that inclusion of pregnancy coverage would increase claims against the fund by $120.2 million, or 36.4%.

The assumptions made to compute this figure of $120.2 million were:

1. The average weekly benefit would be $62.96. This was computed by estimating the average weekly benefit

amount for 1972 for the entire program. A study was then made which showed that the women's benefit rate was approximately 85% of the average rate for the program, over the past five years. It was assumed that this rate would again be approximately 85% in 1972. The estimated program weekly benefit amount × .85 = $62.96.

2. The Population Studies Section of the State Department of Finance furnished the figure of 330,000 births in California in 1971. We assume the same rate would apply in 1972. We further assumed that one-third of these births would be to women covered by the Disability Insurance program, based on Table 11 of "Health Insurance Coverage, Legitimate Live Births, U.S.—1964-1966" (available from U.S. Government Printing Office). This table shows that in the period 1964-1966, 60% of pregnant white mothers and 33⅓% of non-white mothers were employed.

3. The duration of benefits payable for the major category of live births was assumed to be 15 weeks, with 4.0 days hospitalization benefits. Abortions were computed at one week of basic benefits and an average of 2.0 days hospitalization, based upon data furnished by the State Department of Public Health.

CHARLES E. SEVICK

Charles E. Sevick

Subscribed and sworn to before
me this 23rd day of January, 1973.

BILLIE R. HUNTLEY

Notary Public

(Notary Seal)

AFFIDAVIT

[In reply to motion to dismiss]

I, GEORGE C. CALDERWOOD, M.D. state:

I am an obstetrician and gynecologist certified by the American Board of Obstetrics and Gynecology and have practised obstetrics since 1946. In addition, I am a Fellow of the American College of Surgeons and a member of the Pacific Coast Fertility Society and the San Francisco Gynecology Society.

In recent years the attitude that women should be confined for long periods of time prior to and following childbirth has been replaced by the view that women should be encouraged to continue with their normal activities as long as they feel comfortable doing so and, in addition, should be permitted to resume those activities after birth as soon as they are able. The period of time a woman is medically disabled will, of course, depend on a number of factors, including the nature of her job and her general health.

It is my opinion that a conservative estimate of the average time reasonably healthy women can be expected to be disabled due to impending birth and birth is three to four weeks before and three to four weeks after birth. In fact, many of my patients are able to work up to the time they begin labor.

s/ GEORGE CALDERWOOD

George C. Calderwood

Subscribed and sworn to before me
this February 16th, 1973.

s/ MARY A. CHANG
Notary Public

AFFIDAVIT

[In reply to motion to dismiss]

I, PHILLIP J. GOLDSTEIN, M.D., state:

I am Acting Chief of Obstetrics and Gynecology at San Francisco General Hospital. I am an Assistant Professor of Obstetrics and Gynecology at the University of California at San Francisco. I have been full time Director of the Obstetrics Department at San Francisco General Hospital for 3½ years.

From 1968 to 1969 I was a Fellow in Reproductive Biology at the University of California at Los Angeles investigating Fetal Physiology and Acid Base Physiology.

I was a Captain in the United States Army practising Obstetrics and Gynecology for Fort Bragg, North Carolina, from 1966 to 1968.

I was in private practice of Obstetrics and Gynecology from late 1965 to 1966, after finishing a four year residency in Obstetrics and Gynecology at the Jewish Hospital of St. Louis and the St. Louis Maternity Hospital.

The current trend among practitioners of my specialty is to deal more fully with the family unit than we have in the past. This requires evaluating each patient within the context of her social, economic and psychological status while following her obstetric development. Consequently, it becomes impossible to delineate optimal or average time for employment to be either suspended or initiated relative to pregnancy. There will be marked variation in the ability to work based on the number of children, the availability of child care, the presence of complications, and the patient's economic need. Despite these qualifications, however, it is my experience that a large number of women are able to work up until the onset of labor.

The six week return visit is of historical interest only. Ovulation occurs earlier after birth than six weeks post partum, so the medical provider should see patients for whom family planning is appropriate before the traditional six weeks time.

PHILLIP J. GOLDSTEIN, M.D.
Phillip J. Goldstein

Subscribed and sworn to before me
this February 16, 1973.

MAY A. CHANG
Notary Public

Notary Seal.

AFFIDAVIT

[In reply to motion to dismiss]

Dr. N. R. Trueblood, being first duly sworn, deposes and says:

I am an obstetrician and gynecologist certified by the American Board of Obstetrics and Gynecology. I have engaged in the private practice of my specialty since 1967. In addition I am a clinical instructor on the faculty of the Stanford University Medical Center.

Based on my ten years of experience as an obstetrician and gynecologist, it is my conclusion that, in a normal pregnancy with no complications, women working in most of the jobs typically open to them are not disabled in a medical sense until the onset of labor.

It is my belief that it is not only medically unnecessary for most women to cease employment, but that in many cases, it is physically better for the patient to remain active even in the last trimester of pregnancy.

I believe that the views outlined above are not only my personal opinions, but reflect the general attitude of physicians toward pregnancy in 1973.

N. R. Trueblood M.D.
N. R. Trueblood

Subscribed and sworn to before me this February 14, 1973.

Betty W. Carroll
Notary Public

Notary Seal

AFFIDAVIT

[In reply to motion to dismiss]

BETTY KIDDER, being duly sworn, deposes and says:

I have for the past four years worked as a Disability Insurance Officer I in the San Francisco office of the State Disability Insurance Office. During that time, I have handled numerous claims, including those which relate to pregnancy.

Of all the disabilities pregnancy-related disability is the only one not compensated by my department. I personally have paid on claims for disability caused by sex change operations, prostatectomies, circumcision, disabling alcoholism and drug addiction, suicide attempts, sickle cell anemia, psychiatric problems and many others. Based on my personal experience, I believe that one of the most frequently compensated disabilities are those caused by hernias. Of all the disabilities caused by hernias that I have compensated, none were suffered by women. The average disability period for hernias is six to eight weeks. In addition, a large proportion of the disabilities on which I have paid claims are caused by heart conditions and the great majority of these are suffered by men. This disability lasts on an average two to three months.

The manner in which we process claims which may be related to pregnancy is different from other claims. When an original claim form is received in the office, it is given to an examiner for screening. On the doctor's section of the form, one of the questions is whether the applicant is pregnant. If the examiner notices that the doctor has answered the pregnancy question in the affirmative (even though the doctor has stated that the disability is unrelated to the pregnancy) *or* if the doctor answers "no" to the pregnancy question, but the disability is one often related

to pregnancy (such as a "d and c"), investigative procedures are instituted.

Every other claim that comes to the office (except some workmen's compensation claims which are processed under a different system) is processed immediately, and the award established within seven to ten days. In claims where there is a suspicion of pregnancy, these claims are not processed in the normal way. Instead, they are held up for a medical investigation. As a result, such claims may take a month or more to process, during which time the claimant has received no word on the state of her claim.

In addition, if a woman suffers two concurrent disabilities, one pregnancy-related, and one not related to pregnancy, and therefore compensable, she is not paid benefits as long as the pregnancy-related disability exists.

BETTY KIDDER
Betty Kidder

Subscribed and sworn to before me
this February 16, 1973.

FRED H. ALTSHULER
Notary Public

Notary Seal

AFFIDAVIT

[In Support of Amicus Curiae Brief of Equal Employment Opportunity Commission]

Dr. Andre Eugene Hellegers, being first duly sworn, deposes and says:

I am Professor of Obstetrics and Gynecology, Georgetown University Hospital, Washington, D.C., and have held that position since 1967. Since 1971, I have also been the Director of the Kennedy Institute for the Study of Human Reproduction and Bioethics, Georgetown University Hospital. I was also the President of the Perinatal Research Society, a professional organization made up of obstetricians, pediatricians and others engaged in research on the perinatal period; that is, the period before and after childbirth. I obtained my medical degree from Edinburgh University Medical School in 1951.

As a physician and as a professor of obstetrics and gynecology, I have specialized for 15 years in the medical problems surrounding childbirth and pregnancy. In my judgment, most women with normal pregnancies are physically disabled for only a short period of time. Unless her job involves heavy lifting on a regular basis, there is no medical reason that a women cannot continue working until the day of delivery. The only exception might be a case in which a pregnant woman is actually prevented, in a physical sense, from doing her job because of her increased girth; (for the same reasons that an overweight male might be prevented from doing certain jobs).

Moreover, in my opinion the average woman is physically able to return to work within three weeks after delivery. This period of time allows a woman to get enough bed rest so that the uterus can begin to return to its pre-pregnant

size and weight. It is not necessary that the uterus be completely involuted before the average woman can return to work.

I would conclude that, therefore, the period of time the average woman is disabled by a normal pregnancy is no more than three weeks following delivery.

ANDRE E. HELLEGERS, M.D.
Andre E. Hellegers, M.D.

Subscribed and sworn to before me this 14th day of February 1973.

RUTH E. CRENSHAW
Notary Public

Washington, D. C. } ss.

AFFIDAVIT

[In Support of Equal Employment Opportunity Commission]

Dr. Elizabeth A. Crisp, being first duly sworn, deposes and says:

I am a member of the American Board of Obstetrics and Gynecology and have held that post since 1963. I am also a Fellow of the American College of Obstetrics and Gynecology and a Fellow of the American College of Surgeons. I am the Chairman of the Education Committe, Columbia Hospital, Washington, D. C. I am also engaged in the private practice of medicine as an obstetrician and gynecologist and have been so engaged since 1960. I am licensed to practice in Washington, D. C., Louisiana, Virginia, Maryland, and California. In addition to my M.D. degree, I hold a teaching position at the George Washington University Medical School.

As a practicing obstetrician and gynecologist for over 14 years, I have had considerable direct personal experience in attending pregnant women. In my judgment, the average woman is disabled by pregnancy for only a short period of time. Unless her job involves heavy lifting on a regular basis, a woman in good health with a normal pregnancy is physically able to continue her employment until the start of labor.

In addition, after childbirth, a woman whose delivery has been uncomplicated may return to work from three to six weeks after delivery. This is the length of time it normally takes for the uterus to return to its normal size and weight. Many of my patients resume their normal activities within three or four weeks; and six weeks is a conservative estimate.

It is my conclusion, therefore, that the period of time the average woman is disabled by a normal pregnancy is no more than three to six weeks following childbirth.

ELIZABETH A. CRISP
Elizabeth A. Crisp, M.D.

Washington, D.C.

Subscribed and sworn to before me on this 14th day of February, 1973.

W. B. HOOVER
My Commission Expires April 30, 1974

AFFIDAVIT

[IN SUPPORT OF MOTION TO DISMISS]

I WILLIAM D. SMITH, being first duly sworn, depose and say:

I am a Fellow of the Society of Actuaries and a member of the American Academy of Actuaries.

I am now, and have been for fourteen years, a consulting actuary with the firm of Milliman and Robertson, Inc. 1 Kearny Street, San Francisco, California. In that capacity I have done work on a consulting basis for life insurance firms, managers of pension plans and for the California Department of Human Desources Development. I was previously employed for a period of eight years by Prudential Insurance Company, Newark, New Jersey on its actuarial staff. In these positions I have had an opportunity to gain familiarity with actuarial data related to disability questions.

Attached hereto as Exhibit A is a table entitled "1966 Loss Ratio (Benefits ÷ Premium)" prepared by the California Department of Human Resources Development which shows statistics related to disability payments compiled by age, sex, and annual earnings. From this table it can be seen that in every age, the ratio of cost to contributions for female workers is significantly greater than for male workers.

Attached hereto as Exhibit B is a table entitled "Claimants as a Percent of Workers 1966" also prepared by the California Department of Human Resources Development which shows that the percentage of women in the work force who file disability claims is greater than the percentage of men who do.

Attached hereto as Exhibit C is a copy of a document entitled "Table 5, Total Disability Loss-of-Time Experience, 1966-1967, Limited to First Year of Benefit Period," from the "Reports of Mortality and Morbidity" published by the Society of Actuaries. The portion of this table which is relevant here is outlined in red. The "7-Day Elimination Period" is the schedule comparable to the state disability insurance plan which pays no benefits for the first seven days of disability. The "Male Occ. Group I" and "Female Occ. Group I" are comparable groups. This table shows that both the annual claim rate and the annual claim cost are greater for females than for males by significant amounts.

Each of these three schedules furnishes the most recent data available to me at this time, since these studies are updated at about five year intervals.

These figures all confirm our experience: that in every case of sickness or disability benefits, females cost more than males.

WILLIAM D. SMITH
William D. Smith, F.S.A.

Subscribed and sworn to before me this 21st day of February, 1973.

JANET S. YAMAMURA
Notary Public for the
State of California

Notary Seal

1966 LOSS RATIO

(Benefits ÷ Premium)

Annual Earnings	Total	Under 40	40-44	45-49	50-54	55-59	60 and Over
Total Workers	.771	.454	.770	.905	1.059	1.291	1.888
Under $3000	1.282	.750	1.908	2.218	2.383	2.620	2.546
$3000-$3599	1.143	.670	1.293	1.495	1.967	1.994	2.267
3600- 4099	1.111	.615	1.242	1.652	1.853	1.809	2.808
4100- 4299	1.121	.608	1.486	1.737	1.679	1.555	2.724
4300- 4599	1.014	.572	1.485	1.414	1.463	1.487	2.228
4600- 5099	1.008	.585	1.142	1.560	1.681	1.350	2.166
5100- 5599	.916	.485	1.137	1.319	1.298	1.322	2.226
5600 and over	.561	.302	.498	.592	.743	1.021	1.541
Male Workers	.639	.358	.565	.678	.866	1.181	1.854
Under $3000	1.055	.588	1.575	1.963	2.092	2.606	2.499
$3000-$3599	.937	.547	.943	1.145	1.567	2.188	2.188
3600- 4099	.917	.490	.971	1.237	1.455	1.643	3.005
4100- 4299	.975	.533	1.183	.978	1.184	1.693	3.651
4300- 4599	.885	.483	1.222	1.108	1.072	1.542	2.482
4600- 5099	.936	.513	.904	1.277	1.689	1.372	2.467
5100- 5599	.817	.404	1.149	1.058	1.139	1.190	2.299
5600 and over	.529	.278	.445	.545	.718	1.013	1.568
Female Workers	1.182	.757	1.399	1.566	1.659	1.633	1.992
Under $3000	1.523	.945	2.145	2.376	2.604	2.631	2.612
$3000-$3599	1.338	.810	1.542	1.725	2.249	1.860	2.355
3600- 4099	1.304	.760	1.417	1.923	2.192	1.971	2.587
4100- 4299	1.261	.691	1.654	2.461	2.464	1.449	1.920
4300- 4299	1.159	.680	1.710	1.690	1.830	1.419	1.878
4600- 5099	1.094	.681	1.322	1.861	1.674	1.320	1.650
5100- 5599	1.066	.630	1.126	1.545	1.492	1.554	2.051
5600 and over	.823	.546	.905	.894	.907	1.077	1.360

Exhibit A

CLAIMANTS AS A PERCENT OF WORKERS

1966

Annual Earnings	Total	Age: Under 40	40-44	45-49	50-54	55-59	60 and Over
Males	6.18	3.94	7.25	8.09	9.61	11.42	12.09
Under $3000	2.97	2.07	4.53	5.10	5.59	6.59	5.38
$3000-$3599	6.50	4.80	7.08	7.12	9.66	11.58	11.64
3600- 4099	7.38	5.27	8.17	8.44	10.20	10.90	17.47
4100- 4299	7.81	5.70	8.51	8.54	8.67	10.00	21.88
4300- 4599	8.13	5.72	9.55	9.37	10.25	12.37	17.18
4600- 5099	9.03	6.55	9.74	11.53	12.92	11.26	17.26
5100- 5599	9.11	6.30	12.43	11.79	10.86	12.12	17.32
5600 and over	8.31	5.64	7.82	8.76	10.78	13.29	17.29
Females	7.55	4.93	10.54	11.65	12.41	11.97	10.28
Under $3000	5.00	3.42	7.67	8.17	8.93	8.97	6.79
$3000-$3599	11.67	8.33	13.00	14.11	17.99	15.22	16.98
3600- 4099	12.52	8.82	13.61	17.96	18.13	16.61	19.42
4100- 4299	12.88	8.67	17.39	23.84	18.70	12.45	16.08
4300- 4599	13.10	9.07	18.33	17.41	20.23	15.98	15.25
4600- 5099	12.78	8.97	14.13	21.73	18.70	15.52	15.00
5100- 5599	12.72	8.94	14.92	16.69	16.34	12.20	18.68
5600 and over	11.23	8.44	12.55	12.39	12.58	13.80	13.89

Exhibit B

TABLE 5

[Edited to exclude irrelevant data]

TOTAL DISABILITY LOSS-OF-TIME EXPERIENCE
1966-67, LIMITED TO FIRST YEAR OF BENEFIT PERIOD

7-DAY ELIMINATION PERIOD

Attained Age	Female Group I: No. Claims	Annual Claim Rate	Claim Duration (Months)	Annual Claim Cost*	Male Occ. Group I: No. Claims	Annual Claim Rate	Claim Duration (Months)	Annual Claim Cost*
20-29	272	.099	1.21	.120	857	.078	1.14	.089
30-39	564	.123	1.65	.203	2,589	.080	1.30	.104
40-49	1,242	.146	1.83	.267	4,555	.096	1.58	.152
50-59	1,180	.159	1.88	.299	5,111	.126	1.98	.250
60-69	89	.168	2.02	.340	1,779	.148	2.56	.379

*Per $1 of monthly income benefit.

OPINION GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT AND INJUNCTIVE RELIEF AND DISSENTING OPINION OF JUDGE WILLIAMS

In the United States District Court
for the Northern District of California

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Plaintiff,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, et al., individually and on behalf of all other women similarly situated, *Petitioners,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

Before: DUNIWAY, Circuit Judge, WILLIAMS and ZIRPOLI, District Judges.

OPINION

[The majority and dissenting opinions below are printed in the Appendix to the Jurisdictional Statement at pages A-1 through A-28.]

JUDGMENT

In the United States District Court
for the Northern District of California

Filed Jun 19 1973
Clerk, U.S. Dist. Court

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Plaintiff,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, et al., individually and on behalf of all other women similarly situated, *Petitioners,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

JUDGMENT

[A copy of the District Court's Judgment is printed in the Appendix to the Jurisdictional Statement at pages A-29 and A-30.]

MOTION TO RECONSIDER AND SET ASIDE SUMMARY JUDGMENT

In the United States District Court
For the Northern District of California

CAROLYN AIELLO, individually and on behalf of all others similarly situated, *Plaintiff,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
AUGUSTINA D. ARMENDARIZ, ELIZABETH B. JOHNSON, JACQUELINE JARAMILLO, et al., individually and on behalf of all other women similarly situated, *Petitioners,* vs. SIGURD HANSEN, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

MOTION TO RECONSIDER AND SET ASIDE SUMMARY JUDGMENT

[A copy of Motion to Reconsider and Set Aside Summary Judgment, with accompanying Affidavit of Joanne Condas is printed in the Appendix to the Jurisdictional Statement at pages A-34 through A-38.]

OPINION OF CALIFORNIA COURT OF APPEAL

In the Court of Appeal of the State of California
Second Appellate District

Division Two
2d Civil No. 40694

(Sup. Ct. No. C 19074)

Gail E. Rentzer,
Petitioner and Appellant,

v.

California Unemployment Insurance Appeals Board Human Relations Agency,
Respondent.

Valley Presbyterian Hospital,
Real Party in Interest.

OPINION OF THE CALIFORNIA COURT OF APPEAL

[The text of the opinion of the Court of Appeal of the State of California is printed in the Appendix to the Jurisdictional Statement at pages A-44 through A-48.]

United States District Court
for the Northern District of California

Filed—Aug—7 1973
Clerk, U. S. Dist. Court

Carolyn Aiello, etc., *Plaintiff,* vs. Sigurd Hansen, etc., *Defendant.*	No. C-72-1402 SW
Augustina D. Armendariz, et al., *Petitioners,* vs. Sigurd Hansen, etc., *Respondent.*	No. C-72-1547 SW

ORDER DENYING MOTION TO RECONSIDER

The motion of defendant Sigurd Hansen, Director of the State Department of Human Resources Development, to reconsider and set aside the judgment entered in the above numbered causes on June 15, 1973, is denied.

Dated: July 31, 1973

/s/ Ben. C. Duniway
United States Circuit Judge

United States District Judge

/s/ Alfonso J. Zirpoli
United States District Judge

In the United States District Court
for the Northern District of California

Filed—Aug—7 1973
Clerk, U. S. Dist. Court

Carolyn Aiello, etc., *Plaintiff,* vs. Sigurd Hansen, etc., *Defendant.*	No. C-72-1402 SW
Augustina D. Armendariz, et al., *Petitioners,* vs. Sigurd Hansen, etc., *Respondent.*	No. C-72-1547 SW

MEMORANDUM

[The Memorandum opinion of Judge Williams which would have granted rehearing is printed in the appendix to the Jurisdictional Statement at pages A-32—33]

In the United States District Court
For the Northern District of California

Filed—Aug 13 9 20 AM '73

Carolyn Aiello, individually and on behalf of all others similarly situated, *Plaintiff,* vs. Sigurd Hansen, as Director of the State Department of Human Resources Development, *Defendant.*	Civ. No. C-72-1402 SW
Augustina D. Armendariz, et al., individually and on behalf of all other women similarly situated, *Petitioner,* vs. Sigurd Hansen, as Director of the State Department of Human Resources Development, *Respondent.*	Civ. No. C-72-1547 SW

NOTICE OF APPEAL TO THE UNITED STATES SUPREME COURT

Notice is hereby given that Dwight Geduldig, successor to Sigurd Hansen as Director of the Department of Human Resources Development of the State of California, defendant above named, hereby appeals to the United States Supreme Court from the final judgment of the three-judge

district court filed herein on June 15, 1973, and from the order denying defendant's motion to reconsider filed herein on August 7, 1973.

This appeal is taken pursuant to 28 U.S.C. sections 1253 and 2101(b).

Dated: August 13, 1973.

Respectfully submitted,

Evelle J. Younger, Attorney General of the State of California

Elizabeth Palmer
Assistant Attorney General

/s/ Joanne Condas
Joanne Condas
Deputy Attorney General
Attorneys for Defendants

In the United States District Court
for the Northern District of California

AFFIDAVIT IN SUPPORT OF MOTION TO STAY INJUNCTION

I, JOANNE CONDAS, being duly sworn, depose and say:

1. I am attorney for the defendant. I have been in charge of this litigation since its inception and am personally familiar with the facts herein stated.

2. The judgment of this Court entered June 15, 1973, requires that defendant process and pay not only the claims for disability insurance of the named plaintiffs but also the subsequent claims of all female workers for pregnancy disability. Such claims were previously excluded, and the addition of this large category of claims creates a financial crisis for the fund.

3. Defendant has submitted evidence to show that the disability fund has in the past paid out virtually all the funds received, even with pregnancy excluded. This evidence was not disputed. Defendant has also submitted evidence that adding pregnancy coverage would increase claims against the fund approximately 36%, necessitating increased withholding rates or reduced benefit rates or both. This evidence was also not disputed.

4. Defendant's estimate of the cost of adding pregnancy benefits was based upon an average duration of disability of 15 weeks. Defendant's experience since June 15, 1973, confirms the accuracy of that estimate. To date a total of 714 claims have been received. A random sampling of 131 of these claims revealed an average disability claim period of 103 days, or approximately 15 weeks.

5. Approximately 245 of the 714 claims received show that defendant's estimate of the duration of disability was

too conservative. Attached hereto are 53 such claims which show an average duration of 23 weeks. In addition to the extended period of disability claimed, another fact is significant: it is clear that the medical community determines the existence of disability caused by pregnancy on a different and more lenient basis than other disabilities. In all 53 cases, the claimants have readily certified that their pregnant patients are disabled from working when *no medical basis for such certification is disclosed.*

6. I have also ascertained from the administrators of the disability insurance fund that the cost of paying claims under the *Rentzer* decision can be absorbed by the fund without the need for additional financing, although this additional cost will diminish the fund's reserves. On the other hand, payment of all pregnancy claims will cost approximately $131 million in benefits. This cost is not the whole cost, since it does not include administrative expense. It is anticipated that 144,000 more claims would be submitted each year if normal pregnancy were covered. The fund would require approximately 140 additional staff members to process such claims.

Executed at San Francisco, California, this 26th day of July, 1973.

JOANNE CONDAS
Joanne Condas
Deputy Attorney General

Subscribed and sworn to before
me this 26th day of July, 1973.

CLAUDIA V. TARVER
Notary Public in and for said
County and State

(Notary Seal)

EXPLANATORY NOTES

[attached to affidavit, supra]

The documents attached are copies of the actual disability claims submitted, except that all information which would identify the claimant, her physician or her employer has been obliterated to protect the confidentiality of the claim filed. The claims specifically referred to below have been numbered serially to permit ready reference. We draw the Court's attention to such items as:

1. Claim No. 1. Neither the claimant nor her physician described any symptoms of pregnancy amounting to disability. The physician nevertheless concludes: "The patient is unable to continue working in her normal occupation as the distance is too great for her to drive to and from work, plus the pressure and tension related to her position is unwise to undergo at this time." Claimant's occupation is medical receptionist. The expected period of her disability is six months.

2. Claim No. 2. Indicates a period of disability of four months from the date last worked, 4/6/73 to the estimate of return-to-work date given by claimant's physician. The doctor's comment is: "Pt is having a very normal pregnancy [without] any special problem."

3. Claim No. 3 indicates a period of disability from June 19, 1973, the last date worked, to April 20, 1974, a total of nine months. Neither claimant nor her physician note any disabling condition except pregnancy.

4. Claim No. 4 estimates a 6-month period of disability for "cyesis," Stedman's Medical Dictionary defines cyesis as "pregnancy."

5. Claim No. 5 points up one aspect of the problem which makes pregnancy unique: this application for disability is based not on any ailment of the claimant but

upon the possible effect upon her child of continuing to work around chemicals.

6. Claim No 6 estimates an approximate disability period of *ten months* for uneventful pregnancy.

7. Claim No. 7. In this case a routine follow-up letter directed to the claimant's physician elicited no additional information upon which a bona fide claim for disability could be predicated. The doctor merely states: "Patient is claiming disability on the basis of her pregnancy." The period claimed is nine months.

8. Claim No. 8 explains a six-month disability claim. "Pt not able physically to cope with responsibilities of work as pregnancy progresses."

9. Claim No. 9 frankly asks for "maternity leave" and states her period of disability to be four months.

It should be noted that on virtually all claims in which some complication relating to pregnancy is noted, such as nausea, which complication might well disappear prior to the end of the pregnancy, disability is nevertheless computed to the end of the full term of pregnancy plus the traditional six weeks after delivery.

[For brevity, the 53 claim forms have been omitted]

AFFIDAVIT OF BETTY KATHLEEN KIDDER

[In opposition to motion for stay]

I was, from November, 1968 until August 1, 1973, a claims examiner for the Disability Insurance office in San Francisco.

As of my last day at work, disability benefit applications of women disabled by complications of pregnancy were being processed but not paid. Applications of women disabled by normal birth and delivery were being held but were not being processed nor paid, nor were claimants notified of receipt of form.

It is my understanding that the Director of the Department of Human Resources Development is arguing for purposes of this lawsuit that disability applications received from women with normal pregnancies reveal that unduly long disability periods are predicted by many of the applicants' physicians.

As stated above, these applications are not being processed by the State Disability Insurance offices. The Disability offices have an established procedure, once processing has begun, to weed out abuses of the Disability Program. I believe that many of the excesses claimed by H.R.D. will be corrected by this procedure, which is as follows:

When it appears that a disability claim is questionable, the first step taken under this procedure is a field visit to the home of the disability applicant to determine first-hand if the applicant appears to be disabled. If the doubt as to the exitsence, severity or duration of the disability is not dispelled by the field visit, the applicant's physician may be notified that a follow-up questionnaire is necessary. Should doubts persist after the applicant's physician's follow-up, the applicant is required to see another doctor from the Independent Medical Examiner's Board. This Board is composed of private physicians who have agreed to make themselves available to resolve disability disputes arising under the State Disability Insurance Program.

Once claims arising from normal pregnancies are subjected to this process, many of the "abuses" predicted by Sigurd Hansen for purposes of the lawsuit should disappear.

An additional measure which might be conveniently and economically taken by the State Disability Insurance program to prevent abuses would be a pamphlet to physicians,

provided with the physician's report form, clarifying the physicians' role and duty in such cases. Such a pamphlet might set forth the difference between maternity benefits and disability benefits and ask that physicians exercise their medical judgment to distinguish between the two, recommending disability benefits only in the latter situations.

Another alternative would be a separate physician's form in pregnancy cases (as are now provided to Christian Science Practitioners) with questions especially designed to weed out non-disabilities in the pregnancy context.

I would also point out that HRD's sample is thus far small and may not be representative. If the San Francisco office is any indication, the applications for benefits by pregnant women is far lower than predicted.

Dated: 8-21-1973

BETTY KATHLEEN KIDDER
Betty Kathleen Kidder

Subscribed and sworn before me this 21st day of August, 1973

MYRTLE O. BENNETT
Notary Public

Notary Seal

Supreme Court of the United States

No. 73-640

Dwight Geduldig, etc.,

Appellant,

v.

Carolyn Aiello, et al.

APPEAL from the United States District Court for the Northern District of California.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is set for oral argument.

December 17, 1973